



international agreements, including those related to defense, disarmament, and international control (verification) of armaments. With respect to provisional application, he noted that, as a purely legal matter, it would be possible for Russia to assume binding obligations, even with respect to matters for which the Duma had approval authority, during the initial period following signature.

¶4. (U) Subject Summary: Initial Thoughts on U.S.-Proposed Agreement; and, Potential Political Downside of Separate Agreement.

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INITIAL THOUGHTS ON  
U.S.-PROPOSED AGREEMENT  
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¶5. (S) Brown and Dean met with Lobach, who had arrived from Moscow earlier in the day to join the Russian delegation for the duration of the round. He indicated that he had not yet had a chance to read the U.S.-proposed agreement, but he hoped to have a chance, on the following day, to be prepared to discuss with the U.S. lawyers, on a preliminary basis, his reaction to the text in his capacity as a legal advisor, without commenting on the political aspects of the issue, which he stressed were the most important.

¶6. (S) Lobach asked why the United States had proposed the separate agreement and had not instead relied on provisional application of the new treaty. Brown and Dean explained that the agreement was less extensive and detailed and would use

many practices already time tested in START, such as notifications, so its implementation in the short period proposed should be easier than would be new provisions from the treaty now under negotiation. This would be just a gap filler and should be easier to agree upon.

¶7. (S) Lobach responded that many of the elements of the agreement, from a quick perusal, seemed to be the type of provisions that would require Duma approval, noting in particular the fourth subparagraph of paragraph 1 of Article 15 of the Russian Federal Law on International Agreements--which the U.S. lawyers had brought with them--that specifically required ratification of agreements concerning the defense capabilities of the Russian Federation, disarmament and international control (verification) of armaments. Lobach also commented that he was familiar with U.S. international legal practice--given his tour at the Russian Mission to the United Nations in New York--and the use of executive agreements vice treaties, explaining that there was not really an equivalent practice in Russia if it involved a matter that required Duma approval under that law. He did not rule out, however, an agreement similar to what the United States called an Executive Agreement if the subject matter did not deal with issues that were within the purview of the Duma.

¶8. (S) Lobach explained that provisional application of the new treaty would be possible under Russian law for a period of at least six months, prior to submitting the treaty to the Duma, and it would be considered to be legally binding during that period, even if the matters were subject to eventual Duma ratification.

¶9. (S) Lobach remarked that there could be a problem with the formulation, "insofar as permissible under its domestic laws," because of the uncertainty of a Party's compliance with that provision, since it did not appear that the agreement would require a change in domestic law, thus rendering that obligation without legal effect unless the Party decided to seek domestic legislation.

¶10. (S) On the provision relating to a (lower) level of diplomatic protection of inspectors on the territory of the other Party, Lobach commented that the formulation contained in the U.S.-proposed text might be a problem because it did

not really provide privileges and immunities. Brown and Dean noted that there were precedents in bilateral agreements, including the Executive Agreement signed at the end of START concerning early exhibitions, which used the identical language and was successfully carried out. Dean said that he would provide a list of several other agreements where similar formulations had been used with respect to personnel of the Parties on each other's territory.

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POTENTIAL POLITICAL DOWNSIDE  
OF SEPARATE AGREEMENT  
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¶11. (S) Lobach commented that this sort of separate agreement could become a political trap, to be used by those who did not want to conclude the new treaty and who might argue that, once signed, the separate agreement would be

sufficient to cover the strategic relationship between the two sides.

¶12. (S) Documents exchanged.

- U.S.:

-- Copy of U.S.-proposed "Agreement on Interim Measures Relating to their Strategic Offensive Arms."

¶13. (U) Gottemoeller sends.  
GRIFFITHS